

REMARKS

This paper is filed responsive to the Office Action mailed May 4, 2004. Presently, the drawings stand objected to and claim 6 stands objected to. Claims 1 to 5, 7, 11 to 15 and 18 to 21 stand rejected under 35 U.S.C. §102(b) over the Hendricks et al. US Patent No. 5,830,683. Claims 6, 8 to 10, 16 and 17 stand rejected under 35 U.S.C. §103(a) over Hendricks et al. in view of the Falkowski et al. US Patent No. 5,801,010. Applicants respectfully traverse each of the rejections and request reconsideration and reexamination of the application.

The Examiner has objected to the drawings as being informal and having some anomalies. The drawings as filed contained extra matter in addition to the numbered figures. Formal drawings were submitted in response to the Notice to File Missing Parts. This was filed on February 6, 2002. A copy of the drawing submission is enclosed herewith. As the Examiner will see, the extraneous matter has been eliminated from the formal drawings which are now limited to the numbered figures.

The Examiner has objected to claim 6 due the lack of antecedent basis for the term "opening". Claim 6 has been amended to provide the antecedent basis.

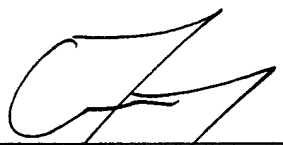
The Examiner has rejected claims 1 to 5, 7, 11 to 15 and 18 to 21 over Hendricks et al. The Examiner points to column 4, lines 44-52 of Hendricks et al. as support for her contention that Hendricks et al. teaches a variable diffusion restriction. However, this paragraph is directed to an embodiment of the Hendricks et al. invention in which the goal rather than to be variable is to be consistently the same. The goal is to have each sterility indicator be manufactured exactly the same in a consistent fashion. It does not teach a variable resistance, but rather teaches away from a variable resistance and towards a consistent, fixed resistance. Accordingly, Hendricks et al. neither anticipate nor make obvious the claimed invention.

The Examiner has rejected claims 6, 8 to 10, 16 and 17 over Hendricks et al. and Falkowski et al. Falkowski et al. add little to the teaching of Hendricks et al. Falkowski

et al. do teach multiple openings into the container which may be either all opened or all closed, but not partially opened. The Examiner argues that the "mere operation of the device" suggests adjustable covering. Applicants respectfully submit that this is hindsight reconstruction at its finest. Falkowski et al. teach either all of the openings being occluded or none of the openings being occluded and nothing in between. The only teaching or suggestion otherwise comes from Applicants' specification. Applicants respectfully submit that the Examiner has failed to establish a prima facie case of obviousness.

Applicants submit that the application is presently in condition for allowance and favorable reconsideration and early notice of allowance are earnestly solicited. The Examiner is encouraged to contact Applicants' attorney at the telephone number listed below if it would speed prosecution.

Respectfully submitted,

By: 

Andrew C. Farmer
Reg. No. 35,868

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2825